

disregarded *in toto*.² As a general matter, the Solicitor General's no-appeal decision may be based on any number of legal and practical considerations, as the U.S. Supreme Court has recognized: "the Solicitor General considers a variety of factors, such as the limited resources of the government and the crowded dockets of the courts, before authorizing an appeal." *United States v. Mendoza*, 464 U.S. 154, 161 (1984). See also MICHAEL E. TIGAR & JANE B. TIGAR, *Federal Appeals Jurisdiction and Practice* § 5:1 (3d ed. 2012) (setting forth a twelve-paragraph list of factors for any litigant, not just the Solicitor General, to consider in deciding whether to appeal an adverse decision). Considerations such as those can lead the government to a no-appeal decision even if it disagrees with an opinion. What is more, the government does not divulge its consideration of those factors. Here, the government certainly did not share its evaluation of the merits of an appeal with Plaintiff—the party who would be adverse to the government if an appeal was in fact pursued. Because Plaintiff's suppositions can be based on nothing more than guesswork, they should be disregarded completely. It was baseless and improper for Plaintiff to assert that the government agrees with the Court's holding on the basis that the government decided not to pursue an appeal.

Not only was Plaintiff wrong to purport to speak for the government, it was also wrong to do so publicly. This Court partially granted Plaintiff's October 17, 2011 Motion to Seal Case, and only approved the unsealing of certain documents. Rev. Mem. Op. at 73 (Oct. 22, 2012) (Dkt. No. 74). However, Plaintiff filed its Motion for Reconsideration and Reply publicly

² For the same reasons, Plaintiff's statements that "by acquiescing in this Court's decision and order, the Government, nunc pro tunc, has decided this report does not deserve publication . . .," Memorandum in Support of Motion for Reconsideration at 15, and "the government has conceded that the report was materially inaccurate by dismissing its appeal . . .," Memorandum in Support of Motion for Reconsideration at 19, should be disregarded as baseless.

without obtaining any leave by this Court to do so. As it stands now, Plaintiff has publicly taken an inaccurate position, improperly on behalf of the government, and Defendants are unable to publicly respond.

Therefore, Defendants move to unseal the instant Statement of Objection and Memorandum in Support so that those accessing the few publicly-available documents in this case do not labor under the misimpression that the government has conceded that the Court's opinion is correct or that the government otherwise agrees with the Court's holding. Further, placing the instant filing on the public docket is consistent with this Court's October 22, 2012, opinion, because it neither reveals Plaintiff's identity nor contains information that could lead to Plaintiff's identity being revealed.

Respectfully submitted,

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